

CLEARY GOTTlieb STEEN & HAMILTON LLP

ONE LIBERTY PLAZA
NEW YORK, NY 10006-1470
(212) 225-2000
FACSIMILE (212) 225-3999
WWW.CLEARYGOTTlieb.COM

WASHINGTON, DC • PARIS • BRUSSELS • LONDON • MOSCOW
FRANKFURT • COLOGNE • ROME • MILAN • HONG KONG
BEIJING • BUENOS AIRES • SÃO PAULO • ABU DHABI • SEOUL

Writer's Direct Dial: +1 (212) 225-2550
E-Mail: lliman@cgsh.com

LAURENT ALPERT
VICTOR I. LEWKOW
LESLIE N. SILVERMAN
ROBERT L. TORTORELLO
LEE C. BUCHHEIT
JAMES M. PEASLEE
ALAN L. BELLER
THOMAS J. MOLONEY
JONATHAN I. BLACKMAN
MICHAEL L. RYAN
ROBERT P. DAVIS
YARON Z. REICH
RICHARD S. LINDER
STEVEN S. HOROWITZ
JAMES A. DUNCAN
STEVEN M. LOEB
CRAIG B. BROD
MITCHELL A. LOWENTHAL
EDWARD J. ROSEN
LAWRENCE D. FRIEDMAN
NICOLAS GRABAR
CHRISTOPHER E. AUSTIN
SETH GROSSHANDLER
WILLIAM A. GROLL
HOWARD S. ZELBO
DAVID E. BRODSKY
MICHAEL R. LAZERWITZ
ARTHUR H. KOHN
RICHARD J. COOPER
JEFFREY S. LEWIS
PAUL J. SHIM
STEVEN L. WILNER
ERIKA W. NIJENHUIS
LINDSEY P. GRANFIELD
ANDRES DE LA CRUZ
DAVID C. LOPEZ
CARMEN A. CORRALES
JAMES L. BROMLEY

MICHAEL A. GERSTENZANG
LEWIS J. LIMAN
LEV L. DASSIN
NEIL Q. WHORISKEY
BIRGE U. JUANTORENA
MICHAEL D. WEINBERGER
DAVID LEINWAND
JEFFREY A. ROSENTHAL
ETHAN A. KLINGSBERG
MICHAEL J. VOLKOVITSCH
MICHAEL D. DAYAN
CARMINE D. BOCCUZZI, JR.
JEFFREY D. KARFF
KIMBERLY BROWN BLACKLOW
ROBERT J. RAYMOND
LEONARD C. JACOBY
SANDRA L. FLOW
FRANCISCO L. CESTERO
FRANCESCA L. ODELL
WILLIAM L. MCRAE
JASON FACTOR
MARGARET S. PEONIS
LISA M. SCHWEITZER
JUAN G. GIRALDEZ
DUANE McLAUGHLIN
BREON S. PEACE
MEREDITH E. KOTLER
CHANTAL E. KORDULA
BENET J. O'REILLY
DAVID AMAN
ADAM E. FLEISHER
SEAN A. ONEAL
GLENN P. McGRORY
MATTHEW P. SALERNO
MICHAEL J. ALBANO
VICTOR L. HOU
ROGER A. COOPER
AMY R. SHAPIRO

JENNIFER KENNEDY PARK
ELIZABETH LENAS
LUKE A. BAREFOOT
PAMELA L. MARCOGLIESE
PAUL M. TIGER
JONATHAN S. KOLODNER
RESIDENT PARTNERS

SANDRA M. ROCKS
S. DOUGLAS BORISKY
JUDITH KASSEL
DAVID E. WEBB
PENELOPE L. CHRISTOPHOU
BOAZ S. MORAG
MARY E. ALCOCK
DAVID H. HERRINGTON
HEIDE H. ILGENFRITZ
HUGH C. CONROY, JR.
KATILICEN M. EMBENGER
WALLACE L. LARSON, JR.
JAMES D. SMALL
AVRAM E. LUFT
DANIEL ILAN
ANDREW WEAVER
HELENA K. GRANNIS
GRANT M. BINDER
MEYER H. FEDIDA
JOHN V. HARRISON
CAROLINE F. HAYDAY
RESIDENT COUNSEL

LOUISE M. PARENT
OF COUNSEL

February 19, 2015

VIA ECF

Hon. Andrew J. Peck, U.S.M.J.
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: *Rio Tinto plc v. Vale S.A., et al.*, Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

Pursuant to the Court's order (Dk. 187), we write on behalf of defendant Vale S.A. ("Vale") in response to the letter filed by plaintiff Rio Tinto plc ("Rio Tinto"), dated February 18, 2015 (Dk. 184), which sought to compel production of the VBG Feasibility Study. As Plaintiff's counsel was well aware when it filed its letter, Vale was in the process of reviewing the eight-volume Feasibility Study to determine which portions were responsive to Plaintiff's document requests, as narrowed by this Court's orders (*see* Nov. 3, 2014 Tr. 42:10-12), and further to determine the appropriate treatment under the Protective Order. That process was completed this morning, and Vale will be producing the entire, unredacted Feasibility Study by early next week.

Careful review of the Feasibility Study was particularly important given the upcoming bidding process for Simandou Blocks 1 and 2 that the Guinean Government has announced will take place in the next few months. The VBG Feasibility Study, compiled at great expense to Vale, is the most recent and comprehensive study of the iron ore deposits at issue, and is obviously of great interest to Vale's competitor, Rio Tinto.¹ Much of the information contained in the Study, although valuable and proprietary to Vale, is of no conceivable relevance to this

¹ Contrary to Plaintiff's suggestion, there is no equivalence between VBG's 2011 Feasibility Study (focused exclusively on Simandou Blocks 1 and 2, the subject of the upcoming bid) and Rio Tinto's 2008 pre-feasibility study (focused primarily on Simandou Blocks 3 and 4), the vast majority of which Plaintiff has conceded contains no information relevant to this case.

Hon. Andrew J. Peck, p. 2

case, and even less falls within the scope of the purportedly misappropriated information that Plaintiff has identified, and which Your Honor has ruled should limit discovery on that subject going forward. Nonetheless, Vale will produce the full Study, without prejudice to its position that much of the information is irrelevant – none of it was stolen from Rio Tinto – and that Plaintiff’s misappropriation requests remain cabined by this Court’s prior rulings.

Finally, it bears repeating that there was no emergency here. The existence of the VBG Feasibility Study has been a matter of public record since at least 2013.² Vale never hid its existence from Rio Tinto or anyone else, and in fact had agreed to produce it before Plaintiff’s manufactured emergency was raised with the Court. In short, the issue is now moot, and could have been avoided if Rio Tinto had not chosen to present a mock “emergency” a few days before the parties’ joint letter filing.

Respectfully submitted,

/s/ Lewis J. Liman
Lewis J. Liman

² See, e.g., *BSG Resources Limited: Beny Steinmetz and BSG Resources sue FTI Consulting LLP and Lord Malloch-Brown*, Reuters, April 11, 2013, available at <http://www.reuters.com/article/2013/04/11/bsg-resources-idUSnBw5gnGZ9a+10c+BSW20130411> (“the feasibility study for Blocks 1 and 2 were submitted in September 2011”).